

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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MARJORIE FERRELL, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	No. C-1-01-447
	)	
v.	)	Judge Sandra S. Beckwith
	)	
WYETH-AYERST LABORATORIES, INC., <i>et al.</i> ,	)	Magistrate Judge Timothy S. Hogan
	)	
Defendants.	)	

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO EXTEND THE  
DEADLINE FOR IDENTIFICATION OF A REPRESENTATIVE FOR SUBCLASS 5 –  
CONSUMERS IN THE STATE OF NEVADA.**

**INTRODUCTION**

On February 2, 2005, this Court issued an Order certifying six subclasses under Fed. R. Civ. P. 23(b)(3) and (c). The Court further ordered that, within thirty days, March 4, 2005, Plaintiffs identify a representative for three of those subclasses, and inform the Court and the parties of the representatives' identities. By this motion, Plaintiffs request that the Court grant an extension for one of those subclasses: Subclass 5, a subclass of consumers in the State of Nevada. Plaintiffs request that, for this one small subclass, the deadline to identify a representative of the subclass be extended by one month, to April 4, 2005.

As directed by S.D. Ohio Civ. R. 7.3(a), Plaintiffs contacted counsel for Defendants and solicited their consent to this extension. Defendants do not agree to such an extension.

**ARGUMENT**

“It has long been recognized that a Court has the inherent power to enter such Orders as may be necessary to the proper administration of the litigation before it.” *People v. Wainwright*, 325 F. Supp. 402, 403 (M.D. Fla. 1971); *See also Amsler v. Smith-Lustig Paper Box Mfg. Co.*, 908 F.2d 972, 1990 WL 106186 at \*1 (6<sup>th</sup> Cir. (Ohio) Jul. 27, 1990)(unpublished). This authority is embodied in Fed. R. Civ. P. 23(d), which states, in part, that the Court may make appropriate orders in the conduct of actions, including issuing orders which determine the course of proceedings or deal with similar procedural matters. *See* Fed. R. Civ. P. 23(d)(1) and (5). Rule 23(d) further provides that such orders may be altered or amended as may be desirable from time to time. *Id.*

Plaintiffs seek a modest extension of time to allow a suitable representative of the Nevada consumer subclass to step forward. As the Court is aware, the defined subclass excludes any consumer who paid a fixed cost, or “flat co-pay” to purchase Premarin, as well as any consumer who was fully reimbursed for such purchases. (Order of February 2, 2005 at p. 2.) Thus, only a limited number of Premarin consumers are potential members of the subclass. With respect to this one subclass, a suitable representative has not yet come forward. Plaintiffs therefore request that the Court extend the deadline by one month, to April 4, 2005.

This extension will not prejudice Defendants in any manner, nor will it result in any expense or undue burden to the Court. There is no current Case Management Order in effect in this action and therefore no deadlines are impacted. Defendants are fully aware of the scope of this Subclass and have had full opportunity to include these claims in any discovery conducted to date, although discovery yet remains at an early stage. Thus, there is no adverse impact on the development of this case.

In contrast, the rights of members of the Nevada consumer subclass may be prejudiced if the extension is not granted. The Court's interest in protecting the rights of potential class members is at the heart of the Court's authority to issue procedural orders supporting the administration of justice. The extension requested by Plaintiffs supports the administration of justice for these class members. Plaintiffs therefore request that the Court exercise its discretion and grant this extension.

### **CONCLUSION**

For the reasons set forth above, Plaintiffs' motion for an extension of time to April 4, 2005 to identify a representative for Subclass 5 -- the subclass of consumers in the State of Nevada -- should be granted.

Dated: March 4, 2005

Respectfully submitted,

/s/ Joseph E. Conley, Jr.  
One of Plaintiffs' attorneys

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**CERTIFICATE OF SERVICE**

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